



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 24, 1994

Ms. Lan P. Nguyen  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR94-666

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29272.

The Houston Police Department (the "department") received an open records request for its file on an unsolved murder that occurred in 1972. You have submitted to this office an affidavit stating that although no criminal charges have been filed in connection with the department's homicide investigation, the department has never closed its investigation and that, in light of the development of new information pertaining to the homicide, there now exists a "genuine possibility of presenting the case to the District Attorney of Harris County, Texas for the filing of charges." You seek to withhold the homicide file from the public at this time pursuant to section 552.108 of the Government Code.

Section 552.108 provides as follows:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

When an incident involving allegedly criminal conduct is under active investigation or prosecution, section 552.108 may be invoked to except from disclosure all information related to the investigation except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). After the investigation or prosecution has been completed, however, the governmental body must demonstrate that releasing the requested information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 552.108. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision Nos. 444, 434 (1986).

You have established that the requested file relates to an active investigation. Although the crime was committed 22 years ago, the statute of limitations has not expired. Crim. Proc. Code § 12.01(1). Furthermore, the department has obtained new information since October 1993. Thus, the department may realistically be able to present this case to the district attorney for prosecution. Accordingly, the department may withhold the records of its investigation under section 552.108 of the Government Code, except for the information generally found on the first page of the offense report.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/RWP/rho

Ref.: ID# 29272

Enclosures: Submitted documents

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